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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/670,884	09/27/2000	Juan A. Morales Tirado	D/A0571	7382

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EXAMINER

SCHLAK, DANIEL K

ART UNIT

PAPER NUMBER

3653

DATE MAILED: 02/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/670,884	TIRADO ET AL.
	Examiner	Art Unit
	Daniel K Schlak	3653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 17 December 2002.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-18, 22 and 23 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) 10-18 is/are allowed.
 6) Claim(s) 1-9, 22 and 23 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) The translation of the foreign language provisional application has been received.
 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____.
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)
 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 11. 6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-9, 22, and 23 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by US 4,841,518.

See figure 8, element (J).

Claims 1-9, 22, and 23 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by US 5,774,445.

See figure 1, item 7.

Claims 1-9, 22, and 23 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by US 3,879,980.

See figures 4, 5, and 6, element (12).

Claims 1-8, 22, and 23 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by US d30995.

See figure 3.

Claims 1-9, 22, and 23 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by US 5,522,706.

See figure 1, element (8).

Claims 1-9, 22, and 23 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by US 5,633,856.

See figure 3, element (3).

Claims 1-7, 22, and 23 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by US d32,793.

These rejections are repeated from the previous Office action, as the claims have not been changed in any way regarding patentability.

The rejections under 35 U.S.C. 112, 1st and 2nd Paragraph have been removed.

Claims 1, 4, 6, 7, 22, and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,899,396, submitted in the recently filed IDS, not made of record until said submission of said IDS.

The disk is marked (7), with a concentric hole (6). There is inherently a fastener for concentrically attaching the disk (7) to the particle outlet opening of the classifier wheel, otherwise it would not rotate with the rotor and would fly off during operation, making the entire device inoperable.

Response to Arguments

Applicant's arguments filed 12/17/02 have been fully considered but they are not persuasive.

The arguments are not commensurate with the scope of the claims.

The preamble for claim 1 is "an article". The preamble for claim 22 is "a kit". In both of these claims, the article/kit is comprised of a disk with an opening, and a

fastener. No further subject matter has been included in these claims to signify what kind of fastener is being claimed.

Thus, the Examiner has rejected these claims, and various dependent claims, with the references used in rejection during the previous Office action, as each of these references teaches a disk with a concentric circular opening, and some type of fastener. Each reference has its own type of fastener, but all of them have a disk with a concentric circular opening.

Applicant argues that all of these references lack a particle opening and a classifier wheel.

Thus, Applicant's assertion of patentability hinges from the article/kit's intended and/or potential function in attaching itself to an opening.

The Examiner reminds Applicant that an "opening" is generally defined as "the absence of matter". Thus, Applicant hinges the patentability assertion of the article/kit claims upon its attachment to something that by definition is not there. How can this patentably distinguish the claims over the references? How can something fasten to a opening to begin with? Applicant has never stated that the disk is for attachment to the inner ring around the opening.

The Examiner further asserts that the classifier wheel itself has not been positively claimed in claims 1 and 22. Clearly there is a fastener and it is disclosed as being "for..." attaching the disk to something, but the classifier wheel makes only a transient appearance in the claim. What kind of classifier wheel is it? Is it part of the combination? Why has it not been claimed on its own, without combining to the other

elements of the claim solely via intended use of the fastener? If the essence of the "article" or "kit" is intended to convey along with the other elements in this claim a classifier wheel, surely defining the classifier wheel solely through its relationship to the fasteners is not the most positive/definite way to do so. Does the article include the combination of disk and classifier wheel, or does it only include the disk? This question is heretofore unanswered.

Are these claims intended to establish the proprietary rights of a device comprising a disk with a hole, or only the disk's attachment to a classifier wheel? In the latter case, the Examiner points out that claim 15 obtains quite adequate coverage for such a combination; possibly the broadest claim possible for such combination.

Thus, it is clear that Applicant has only provided a claim for a disk with an opening and a fastener. Then why are the arguments directed to a classifier wheel? As the arguments discuss something which is not adequately put forth in the claims to begin with, it can hardly be considered that they pertain to the art in any patentable sense.

Again, the article/kit cannot in this case be ascribed any patentability based on what it might or might not be used for. The disks of the references used could easily be attached to an "opening" that is part of a classifying wheel. The disk of the instant application could easily be used for a myriad of alternative functions. For instance, it could be rolled down a hill. Is it still the same disk? Does this claim still hold when the disk is not attached to an "opening", but rolling down a hill? What is so special about the disk that it is patentable over the cited art, that can be put forth without drawing

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reference to a classifier wheel? If the classifier wheel is necessary in claiming the disk, then claim 15 suffices. If Applicant wishes to claim a disk without reciting it in combination with the classifier wheel, then Applicant is advised that his/her claim is for a disk only, and cannot escape rejections under references clearly showing all of the claimed elements of the disk.

For instance, the disk of '706 is indeed attached to an "opening" in a classifier wheel. The annular space around the disk but within the housing of the turbine/compressor stage is certainly an outlet opening, as it constantly passes particle-laden air. The opening can be considered the opening of a "classifier wheel" because there are usually over a dozen stages of such a device, and each disk (wheel) separates one stage from another, thereby classifying it into a) stage 1, pressure = 1.2 atm; b) stage 2, pressure = 1.5 atm; c) stage 3, pressure = 1.8 atm; etc.

Applicant further alleges that US 4,841,518, 5,633,856, 5,522,706, 3,879,980, and 5,774,445 do not teach circular openings.

'518 clearly shows a circular opening in disk (j) in figure 8.

'856 clearly shows a circular hole (8) in disk (3) in figure 3, through which axle (1) fits.

'706 is a rotor disk for a turbine engine. If the hole were anything other than circular it would be of itself a revolutionary design, as the Examiner is unaware of any rotor disk in the history of turbine engines that had a central hole that was not perfectly circular.

Figure 2 of '980 shows a circular aperture (41) that is so obvious it is not worth discussing.

As for '445... Applicant is directed to the disk at the bottom of figure 1. Directly in its center is a hole. If it can be asserted with any credibility at all that the hole is any other shape than "circular", then the Examiner has lost touch with the meaning of the word. If such is the case, Applicant is invited to call the number below and re-educate him.

Allowable Subject Matter

Claims 10-18 are allowed.

None of the cited references teach a classifier wheel that has upper and lower surfaces connected by vanes, wherein there is a hole in the lower surface that has within it and fastened to it a disk with another circular hole in it.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on 11/01/02 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609(B)(2)(i). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel K Schlak whose telephone number is 703-305-0885. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Walsh can be reached on 703-306 - 4173. The fax phone numbers

for the organization where this application or proceeding is assigned are 703-306-4195
for regular communications and 703-306-4195 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or
proceeding should be directed to the receptionist whose telephone number is 703-308 -
1113.

dko
February 24, 2003


DONALD F. WALSH
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